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## *The Public Service Commission State of South Carolina*

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October 10, 2008

**Certified Mail - Return Receipt Requested**

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Shannon Bowyer Hudson, Esquire  
Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, South Carolina 29201

Re: Docket No. 2008-247-C – Application of ATC Outdoor DAS, LLC for a Certificate of  
Public Convenience and Necessity

Dear Jack, John, Peg, Sue-Ann, and Shannon:

Enclosed please find a proposed order in the above-captioned docket, which is being delivered to you pursuant to the requirements of 26 S.C. Code Ann. Regs. 103-841(C). As parties of record in this case, you have ten (10) days from your receipt of this proposed order to file exceptions, present briefs, and/or file written requests for oral argument to the Commission, if you should desire to do so. If none of these are received by me within 10 days of your receipt of the proposed order, I will request that the Commission issue its order in this case based upon the record of the formal proceeding and the proposed order.

Sincerely,

F. David Butler  
Hearing Examiner

FDB/hha  
Enclosure  
cc: Joseph Melchers, Chief Counsel  
Douglas Pratt, Advisory Staff

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2008-247-C - ORDER NO.  
OCTOBER 10, 2008

IN RE: Application of ATC Outdoor DAS, LLC for	)	ORDER GRANTING
a Certificate of Public Convenience and	)	CERTIFICATE AND
Necessity to Provide Resold and Facilities-	)	APPROVING FLEXIBLE
Based Local Exchange and Interexchange	)	REGULATION-
Telecommunications Services in the State of	)	PROPOSED ORDER OF
South Carolina and for Flexible Regulation	)	THE HEARING
	)	EXAMINER

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of ATC Outdoor DAS, LLC (“ATC Outdoor” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold and facilities-based local exchange and interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2007) and the rules and regulations of the Commission. By its Application, ATC Outdoor also requests flexible regulation of its local exchange service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C, and waiver of certain Commission regulations.

The Commission’s Docketing Department instructed ATC Outdoor to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of ATC Outdoor and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. ATC Outdoor complied

with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by the South Carolina Telephone Coalition (“SCTC”). Subsequent to the intervention, ATC Outdoor and SCTC reached a Stipulation, attached hereto as Order Exhibit 1.

A hearing was convened on September 29, 2008, at 10 a.m. in the offices of the Commission in Columbia, South Carolina, before David Butler, Hearing Examiner. ATC Outdoor was represented by John J. Pringle, Jr., Esquire. The Office of Regulatory Staff (“ORS”) was represented by Shannon Bowyer-Hudson, Esquire. The South Carolina Telephone Coalition did not appear at the hearing.

Gerard Ainsxtein, Senior Vice President, DAS Solutions & Acquisitions for ATC Outdoor appeared and testified in support of the Company’s Application. The record reveals that ATC Outdoor is a limited liability corporation in Delaware and has registered to transact business in South Carolina. According to Mr. Ainsxtein, the Company seeks authority both as a reseller and facilities-based provider of local services and interexchange services. Mr. Ainsxtein explained the Company’s request for authority, and the record further reveals the Company’s services, operations, and marketing procedures. The Company’s primary market is as a carrier’s carrier. ATC Outdoor will offer transport of voice and data signals via fiber optic lines, initially focused on serving wireless providers. ATC Outdoor’s “RF transport services” use fiber optic technology, including multi-wavelength optical technology over dedicated transport facilities, to provide telecommunications companies with more efficient transport and greater overall

network service options, according to Mr. Ainsxtein. The Company has no plans to offer services to residential or business end-users at this time.

Mr. Ainsxtein also discussed ATC Outdoor's technical, financial, and managerial resources to provide the services for which it seeks authority. Mr. Ainsxtein offered that ATC Outdoor possesses sufficient financial resources to support its operations in South Carolina. With regard to management and technical capabilities, the Company's Application and Mr. Ainsxtein's testimony both evidence that ATC Outdoor's management has extensive experience in telecommunications, information technology, regulatory matters, and accounting and finance. Mr. Ainsxtein also testified that ATC Outdoor will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. Mr. Ainsxtein offered that approval of ATC Outdoor's Application would serve the public interest.

The Company requests a waiver of 26 S.C. Code Ann. Regs. 103-610, since the Company's books are maintained in Massachusetts. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts ("USOA"). ATC Outdoor maintains its books in accordance with Generally Accepted Accounting Principles ("GAAP"). In addition, the Company requests that it not be required to publish directories, and therefore requests waiver of 26 S.C. Code Ann. Regs. 103-631.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. ATC Outdoor is a limited liability company organized under the laws of the State of Delaware and is authorized to do business in South Carolina by the Secretary of State.

2. ATC Outdoor desires to operate as a provider of resold and facilities-based local and interexchange services in South Carolina.

3. We find that ATC Outdoor possesses the managerial experience and capability to operate as a provider, through resale or on a facilities basis, of local services and interexchange services in South Carolina.

4. We find, based on the financial statements submitted by the Company and the testimony at the hearing, that ATC Outdoor possesses sufficient financial resources to provide the services as described in its Application and testimony.

5. We find that the issuance of a Certificate of Public Convenience and Necessity to ATC Outdoor to operate as a facilities-based and/or reseller of local exchange telecommunications and interexchange services in South Carolina would be in the best interest of the citizens of South Carolina by providing more innovative services as a carrier's carrier in South Carolina.

6. ATC Outdoor requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds ATC Outdoor's requested waiver reasonable and understands the potential difficulty presented to ATC Outdoor should the waiver not be granted. Further, we find that a waiver of 26 S.C. Code Ann. Regs. 103-610 to be in the public interest. We also believe that exemption from the policies that would require the Company to keep

its records under the USOA is reasonable. Additionally we find that a waiver of 26 S.C. Code Ann. Regs. 103-631 is reasonable and in the public interest.

7. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B) (1) (Supp. 2006).

8. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B) (3) (Supp. 2006).

9. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B) (4) (Supp. 2006).

10. The Commission finds that services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B) (2) (Supp. 2006).

11. The Commission finds that the provision of local exchange service by the Company "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280(B)(5) (Supp. 2006).

12. Following execution of a Stipulation with intervenor South Carolina Telephone Coalition ("SCTC"), the SCTC withdrew its opposition to the Application.

**CONCLUSIONS OF LAW**

1. The Commission concludes that ATC Outdoor possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that ATC Outdoor will participate in the support of universally available telephone service at affordable rates to the extent that ATC Outdoor may be required to do so by the Commission.

3. The Commission concludes that ATC Outdoor will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of ATC Outdoor's Application to provide intrastate telecommunications services within South Carolina will serve the public interest by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by ATC Outdoor will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide intrastate local exchange and interexchange telecommunications services as requested by ATC Outdoor and as set forth in its Application and Mr. Ainsxtein's testimony is in the best interests of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to ATC Outdoor to provide resold and facilities-based intrastate local exchange telecommunications services and intrastate interexchange telecommunications services.

8. The Commission adopts a rate design for ATC Outdoor for its interexchange services, should it offer services to end-users, which includes maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). The Commission concludes, however, that the Company's rates shall normally be designated by contract.

9. ATC Outdoor shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public, should the Company offer its services to end-users. ATC Outdoor shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp.2006).

10. The Commission concludes the Company's local exchange telecommunications services shall be regulated in accordance with the principles and



procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

11. We conclude that ATC Outdoor's request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted as strict compliance with the regulation would potentially cause undue hardship on that Company. We also grant exemption from the policies requiring the use of USOA. In addition, we grant waiver of 26 S.C. Code Ann. Regs. 103-631, which requires the publication of directories.

12. The Stipulation and Settlement Agreement between the Company and SCTC should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to ATC Outdoor to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through resale of intrastate Wide Area Telecommunications Services ("WATS"), Message Telecommunications Service

(“MTS”), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission, as well as to provide facilities-based or resold local exchange telecommunications services within the State of South Carolina. The Company is also specifically authorized to provide facilities-based and resold inbound and outbound interexchange telecommunications services.

2. The Company’s rate designs for its products shall conform to those designs described in Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, ATC Outdoor shall file its revised tariff, if any, and an accompanying price list for any applicable rates within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission’s Rules and Regulations, as well as the provisions of the ATC Outdoor-ORS Settlement Agreement.

4. To the extent applicable, ATC Outdoor is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company’s resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. ATC Outdoor shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If ATC Outdoor changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same LATA, ATC Outdoor shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, ATC Outdoor shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. ATC Outdoor shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, ATC Outdoor shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at [www.psc.sc.gov/forms.asp](http://www.psc.sc.gov/forms.asp) or at the ORS's website at [w.w.w.regulatorystaff.sc.gov](http://w.w.w.regulatorystaff.sc.gov). The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1<sup>st</sup>**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31<sup>st</sup>** of each year. The proper form for filing gross receipts information can be found at the ORS website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov), and the appropriate form is entitled “Gross Receipts Form.”

Each telecommunications company certified in South Carolina is required to file annually with the ORS the Intrastate Universal Service Fund (“USF”) worksheet, which may be found on the ORS’s website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). This worksheet provides ORS information required to determine each telecommunications company’s liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **August 15<sup>th</sup>** with the Commission and ORS.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. ATC Outdoor shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at [www.psc.sc.gov/forms.asp](http://www.psc.sc.gov/forms.asp); this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

10. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. At the hearing, ATC Outdoor requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2006), which requires that records required by the Commission's Rules and Regulations be maintained in South Carolina. The Commission finds ATC Outdoor's requested waiver reasonable and understands the potential difficulty presented to ATC Outdoor should the waiver not be granted. The Commission therefore grants the requested waiver. However, ATC Outdoor shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and ATC Outdoor shall promptly notify the Commission and ORS if the location of its books and records changes.

12. ATC Outdoor also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts. The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, ATC Outdoor maintains its book of accounts in accordance with Generally Accepted Accounting Principles. GAAP is used extensively by interexchange carriers and other providers. Accordingly, ATC Outdoor requests an exemption from the USOA requirements. We grant the Company's request for the reasons stated above. The waiver of 26 S.C. Code Ann. Regs. 103-631 is also approved.

13. Should the Company offer applicable service in the future, ATC Outdoor is required to comply with Title 23, Chapter 47 of the South Carolina Code Annotated,

which governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911” system or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs ATC Outdoor to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating, should the Company become interconnected to the public switched telephone network. Contact with the appropriate 911 service authorities is to be made before beginning local telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office of the Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing local telephone services in South Carolina, ATC Outdoor shall contact the 911 coordinator in each county (and city where the city has its own 911 system) and shall provide information regarding the Company’s operations as required by the 911 system.

14. The Stipulation between the Company and SCTC is hereby approved.

15. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

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Elizabeth B. Fleming, Chairman

ATTEST:

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John E. Howard, Vice Chairman  
(SEAL)

<b><u>Docket No. 2008-247-C</u></b> – Application of ATC	)	<b><u>CERTIFICATE OF SERVICE</u></b>
Outdoor DAS, LLC for a Certificate of Public	)	
Convenience and Necessity to Provide Resold and	)	<b>(By Certified U.S. Mail)</b>
Facilities-Based Local Exchange and	)	<b>(Return Receipt Requested)</b>
Interexchange Telecommunications Services in the	)	
State of South Carolina and for Flexible	)	
Regulation	)	

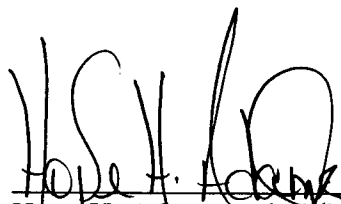
I, Hope H. Adams, an employee of the Public Service Commission of South Carolina, do hereby certify that I have this date served one (1) copy of ***Order Granting Certificate and Approving Flexible Regulation – Proposed Order of the Hearing Examiner*** issued in the above-referenced docket, dated October 10, 2008, to the person(s) named below by causing said copies to be deposited with the United States Postal Service, by certified mail, return receipt requested, postage prepaid and addressed as follows:

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 Hope H. Adams, Administrative Assistant  
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